

(1) State the reason(s) why the *Application for Temporary Employment Certification* or job order fails to meet the criteria for acceptance and state the modification needed for the CO to issue a Notice of Acceptance;

(2) Offer the employer an opportunity to submit a modified *Application for Temporary Employment Certification* or job order within 10 business days from the date of the Notice of Deficiency. The Notice will state the modification needed for the CO to issue a Notice of Acceptance;

(3) Offer the employer an opportunity to request administrative review of the Notice of Deficiency before an ALJ under provisions set forth in §655.61. The notice will inform the employer that it must submit a written request for review to the Chief ALJ of DOL within 10 business days from the date the Notice of Deficiency is issued by facsimile or other means normally assuring next day delivery, and that the employer must simultaneously serve a copy on the CO. The notice will also state that the employer may submit any legal arguments that the employer believes will rebut the basis of the CO's action; and

(4) State that if the employer does not comply with the requirements of this section by either submitting a modified application within 10 business days or requesting administrative review before an ALJ under §655.61, the CO will deny the *Application for Temporary Employment Certification*. The notice will inform the employer that the denial of the *Application for Temporary Employment Certification* is final, and cannot be appealed. The Department will not further consider that *Application for Temporary Employment Certification*.

[77 FR 10160, Feb. 21, 2012]

§ 655.32 Submission of a modified application or job order.

(a) *Review of a modified Application for Temporary Employment Certification or job order.* Upon receipt of a response to a Notice of Deficiency, including any modifications, the CO will review the response. The CO may issue one or more additional Notices of Deficiency before issuing a Notice of Decision. The employer's failure to comply with a

Notice of Deficiency, including not responding in a timely manner or not providing all required documentation, will result in a denial of the *Application for Temporary Employment Certification*.

(b) *Acceptance of a modified Application for Temporary Employment Certification or job order.* If the CO accepts the modification(s) to the *Application for Temporary Employment Certification* and/or job order, the CO will issue a Notice of Acceptance to the employer. The CO will send a copy of the Notice of Acceptance to the SWA instructing it to make any necessary modifications to the not yet posted job order and, if applicable, to the employer's attorney or agent, and follow the procedure set forth in §655.33.

(c) *Denial of a modified Application for Temporary Employment Certification or job order.* If the CO finds the response to Notice of Deficiency unacceptable, the CO will deny the *Application for Temporary Employment Certification* in accordance with the labor certification determination provisions in §655.51.

(d) *Appeal from denial of a modified Application for Temporary Employment Certification or job order.* The procedures for appealing a denial of a modified *Application for Temporary Employment Certification* and/or job order are the same as for appealing the denial of a non-modified *Application for Temporary Employment Certification* outlined in §655.61.

(e) *Post acceptance modifications.* Irrespective of the decision to accept the *Application for Temporary Employment Certification*, the CO may require modifications to the job order at any time before the final determination to grant or deny the *Application for Temporary Employment Certification* if the CO determines that the offer of employment does not contain all the minimum benefits, wages, and working condition provisions as set forth in §655.18. The employer must make such modification, or certification will be denied under §655.53. The employer must provide all workers recruited in connection with the job opportunity in the *Application for Temporary Employment Certification* with a copy of the modified job order no later than the date

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work commences, as approved by the CO.

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§ 655.33 Notice of acceptance.

(a) *Notification timeline.* If the CO determines the *Application for Temporary Employment Certification* and job order are complete and meet the requirements of this subpart, the CO will notify the employer in writing within 7 business days from the date the CO received the *Application for Temporary Employment Certification* and job order or modification thereof. A copy of the Notice of Acceptance will be sent to the SWA serving the area of intended employment identified by the employer on its job order and, if applicable, to the employer's attorney or agent.

(b) *Notice content.* The notice will:

(1) Direct the employer to engage in recruitment of U.S. workers as provided in §§ 655.40–655.46, including any additional recruitment ordered by the CO under § 655.46;

(2) State that such employer-conducted recruitment is in addition to the job order being circulated by the SWA(s) and that the employer must conduct recruitment within 14 calendar days from the date the Notice of Acceptance is issued, consistent with § 655.40;

(3) Direct the SWA to place the job order into intra- and interstate clearance as set forth in § 655.16 and to commence such clearance by:

(i) Sending a copy of the job order to other States listed as anticipated worksites in the *Application for Temporary Employment Certification* and job order, if applicable; and

(ii) Sending a copy of the job order to the SWAs for all States designated by the CO for interstate clearance;

(4) Instruct the SWA to keep the approved job order on its active file until the end of the recruitment period as defined in § 655.40(c), and to transmit the same instruction to other SWAs to which it circulates the job order in the course of interstate clearance;

(5) Where the occupation or industry is traditionally or customarily unionized, direct the SWA to circulate a copy of the job order to the following labor organizations:

(i) The central office of the State Federation of Labor in the State(s) in which work will be performed; and

(ii) The office(s) of local union(s) representing employees in the same or substantially equivalent job classification in the area(s) in which work will be performed;

(6) Advise the employer, as appropriate, that it must contact the appropriate designated community-based organization(s) with notice of the job opportunity; and

(7) Require the employer to submit a report of its recruitment efforts as specified in § 655.48.

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§ 655.34 Electronic job registry.

(a) *Location of and placement in the electronic job registry.* Upon acceptance of the *Application for Temporary Employment Certification* under § 655.33, the CO will place for public examination a copy of the job order posted by the SWA on the Department's electronic job registry, including any amendments or required modifications approved by the CO.

(b) *Length of posting on electronic job registry.* The Department will keep the job order posted on the electronic job registry until the end of the recruitment period, as set forth in § 655.40(c).

(c) *Conclusion of active posting.* Once the recruitment period has concluded the job order will be placed in inactive status on the electronic job registry.

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§ 655.35 Amendments to an application or job order.

(a) *Increases in number of workers.* The employer may request to increase the number of workers noted in the *H-2B Registration* by no more than 20 percent (50 percent for employers requesting fewer than 10 workers). All requests for increasing the number of workers must be made in writing and will not be effective until approved by the CO. In considering whether to approve the request, the CO will determine whether the proposed amendment(s) are sufficiently justified and must take into account the effect of the changes on the underlying labor market test for the job opportunity. Upon acceptance of an